

November 12, 2010

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-B204
Washington, DC 20554

Re: WT Docket No. 05-265
***Ex Parte* Notice**

Dear Ms. Dortch:

Rural Cellular Association (RCA)¹ and the Rural Telecommunications Group (RTG)² hereby supplement the record in the above referenced proceeding, as requested by James Schlichting of the Wireless Telecommunications Bureau (WTB) of the Federal Communications Commission (FCC or Commission), to include specific examples of anticompetitive behavior experienced by their respective members when attempting to obtain data roaming agreements with AT&T and/or Verizon Wireless.

RCA Examples

Cox Communications: In a letter to the FCC dated April 28, 2010,³ RCA member Cox Communications (Cox) detailed its efforts to negotiate a roaming agreement with Verizon. Specifically, Cox first contacted Verizon on August 28, 2009 to discuss a roaming arrangement. After receiving no response, Cox left a message on September 22, 2009 with Verizon's Director of Roaming. Cox still received no response and thus followed up with an email on October 13, 2009. When that failed to elicit a response, Cox's Vice President of Regulatory Affairs, Jennifer Hightower, contacted Verizon's General Counsel's office. Finally, on November 25, 2009, Verizon's Director of Roaming contacted Cox. Several weeks later Verizon finally presented Cox on December 17, 2009 with a NDA.

Cellular South: In its comments in the above referenced proceeding,⁴ RCA member Cellular South described how rural and small regional carriers generally are having difficulties in securing data roaming arrangements from the large national carriers. More specifically, Cellular South advised the Commission that it has constructed EVDO facilities in portions

¹ RCA is an association representing the interests of nearly 100 regional and rural wireless licensees providing commercial services to subscribers throughout the Nation and licensed to serve more than 80 percent of the country. Most of RCA's members serve fewer than 500,000 customers.

² RTG is a trade association representing rural wireless carriers who serve less than 100,000 subscribers. RTG's members have joined together to speed delivery of new, efficient and innovative telecommunications technologies to remote and underserved communities.

³ See Letter from Michael H. Prior, Counsel to Cox Communications, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 09-104 (dated Apr. 28, 2010).

⁴ Comments of Cellular South, Inc. at 21, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services* (June 14, 2010).

of its service area. For over a year, Cellular South's requests for an automatic roaming agreement were rebuffed by larger carriers.

SouthernLINC Wireless: RCA member SouthernLINC Wireless explained in its filings in this docket that the absence of a data roaming obligation has prevented SouthernLINC Wireless from being able to obtain a data roaming arrangement with a national provider.⁵ As a result, SouthernLINC Wireless subscribers, including local and statewide government and public safety agencies, public utilities, hospitals and ambulance companies, and enterprises in a variety of sectors such as transportation and construction, lack access to data services when they travel.

Anonymous RCA Members: Two other RCA members, which prefer to remain unnamed due to competitive concerns, have had similar experiences. The first RCA member struggled to negotiate a data roaming agreement with a technically compatible larger carrier for almost 18 months. Due to increasing competitive obstacles, the lack of a data roaming agreement, and loss of customers, this rural carrier was eventually acquired by a larger wireless operator.

In another RCA member's attempt to negotiate a 3G voice and data roaming agreement with AT&T, it took four months before AT&T offered a "universal" proposal. Once received, the proposal stated that AT&T had no intention of allowing the AT&T customers to roam on our member's network, and proposed rates of \$1 per megabit for data, doubled the voice rate, and added an SMS rate which has been on a bill and keep basis since the genesis of SMS. Additionally, AT&T required Most Favored Nations pricing on its own 2G traffic.

RTG Examples

Mosaic Telecom: RTG member CTC Telcom, Inc. (dba Mosaic Telecom) owns and operates a HSPA (3G) commercial mobile wireless network in Wisconsin. After launching service in 2009, Mosaic Telecom attempted to negotiate a 3G data roaming agreement with AT&T but was denied outright. Today, Mosaic Telecom subscribers are still unable to roam at the 3G speeds they enjoy while on-network despite AT&T having the same air-interface technology and Mosaic Telecom subscribers having access to compatible handsets and devices.

Copper Valley Wireless: RTG and RCA member Copper Valley Wireless owns and operates a CDMA and 1xRTT/EVDO data (2G/3G) commercial mobile wireless network in rural Alaska. Verizon Wireless has denied Copper Valley's repeated requests to implement data roaming between the two companies. Verizon has demanded that Copper Valley pay for a redundant connection which would be prohibitively expensive for a small, rural carrier. Copper Valley customers are currently able to data roam on Sprint and Sprint did not require a second connection. It should be noted that Alaska is one of the few

⁵ Comments of SouthernLINC Wireless at 34, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services* (June 14, 2010); Reply Comments of SouthernLINC Wireless at 7-8, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services* (July 12, 2010).

markets where Verizon does not own or operate a commercial mobile wireless network, and therefore, Verizon subscribers are effectively denied data roaming in the markets Copper Valley serves.

SRT Communications Inc.: RTG member SRT owns and operates a CDMA and 1xRTT data (2G) commercial mobile wireless network in rural North Dakota. Verizon has offered SRT 2G data roaming, but at a wholesale price that is at least 10 times the price per-MB of SRT's next lowest CDMA/1xRTT roaming partner. This "take-it-or-leave-it" offer from Verizon effectively prevents SRT from offering truly nationwide data roaming due to the exorbitant operating costs. Additionally, because SRT is unable to match the nationwide coverage and data speeds of Verizon, which is a direct retail competitor in North Dakota, SRT is now at a competitive disadvantage to Verizon when trying to advertise to existing and prospective customers, regardless of price-points or device availability.

Anonymous RTG Members: At least two other RTG members, which prefer to remain unnamed due to competitive concerns, have had similar difficulties in obtaining data roaming agreements with national carriers. Carrier A, a small rural carrier, requested a 3G data roaming agreement with AT&T, however AT&T would only enter into such an agreement if Carrier A agreed to an *increase* in previously established data *and* voice roaming rates now that Carrier A's customers roam on AT&T more than AT&T roams on Carrier A. Carrier A and AT&T are direct retail competitors in the majority of Carrier A's licensed markets. Like many small carriers, Carrier A is now in a position where it is forced to either dramatically increase its operating expenses in exchange for obtaining 3G data roaming with AT&T (and risk getting upside down) or forego offering 3G data roaming services to its customers at the risk of losing the customer altogether.

Carrier B, a new RTG member from Wisconsin, is in a similar position. Carrier B launched 3G service and sought a data roaming agreement with AT&T but was informed that the data roaming rate offered would be ten times higher than its rate with another national carrier, and furthermore, that the voice roaming rate would be three times higher than the member has with the same alternative national carrier. Because of the prohibitive rates, the carrier has not entered into a data roaming agreement with AT&T.

Additionally, many RTG members who have 2.5G networks and are trying to upgrade to 3G have contacted both AT&T and Verizon to get a 3G data roaming agreement to determine if the rates, terms and conditions make business sense before they purchase 3G equipment and upgrade their existing networks. Both AT&T and Verizon have told RTG's members that they will not provide agreements unless and until they have a compatible 3G network in place. RTG members cannot make a decision regarding 3G upgrades if they do not know what the rates, terms and conditions for 3G data roaming agreements will be. Obtaining fair 3G data roaming is critical to these decisions.

Most recently, AT&T told RCA it will not negotiate any 3G data roaming agreements unless it helps to fill-in its nationwide coverage map. Verizon has also told numerous RTG members that it will not enter into EVDO (3G) roaming agreements in areas where it already has 3G coverage. In other words, if AT&T or Verizon do not have 3G holes to fill, they do not want a carrier to have the benefit of roaming on their respective 3G networks. RTG will hold its annual meeting November 17-18 and will collect additional

In sum, these examples prove that rural and regional carriers simply are not in a position to obtain data roaming agreements with reasonable terms and rates from AT&T and Verizon Wireless in the absence of a data roaming mandate. An automatic data roaming obligation is essential to preserving and promoting competition, innovation and investment in wireless data services and wireless networks.



By: _____

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Caressa D. Bennet
General Counsel